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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

More Enterprises Communications Network, Inc.  
San Diego, California

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File Number: EB-05-SD-011

NAL/Acct. No: 200532940008

FRN: 0010-9017-34

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: September 28, 2005

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that More Enterprises Communications Network, Inc. ("More Enterprises"), in San Diego, California, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> by operating an unlicensed microwave radio station on microwave channels 21675.0 MHz and 22471.75 MHz.<sup>2</sup> We conclude, pursuant to Section 503(b) of the Act,<sup>3</sup> that More Enterprises is apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On December 14, 2004, an agent from the Commission's San Diego Office was investigating allegations that companies in the San Ysidro area of San Diego were using unauthorized microwave radio stations to communicate with sister companies across the U.S. – Mexico border in Tijuana, Mexico. The agent monitored and measured the transmissions of a microwave radio station operated by More Enterprises Communications Network, Inc., at an unattended transmitter site at 4630 Border Village Road, San Diego, California. The frequency measurement showed that this microwave radio station was operating on microwave channel 21675.0 MHz.

3. A review of the Commission's database revealed that More Enterprises had no authorization to operate a point-to-point microwave radio station. However, a pending application, filed by More Enterprises on September 2, 2004, for frequency 22471.75 MHz at the 4630 Border Village

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<sup>1</sup>47 U.S.C. § 301.

<sup>2</sup>47 C.F.R. § 101.147(s).

<sup>3</sup>47 U.S.C. § 503(b).

Road location was found.<sup>4</sup>

4. On January 25, 2005, the San Diego agent returned to the More Enterprises site and again measured the microwave radio station operating on microwave channel 21675.0 MHz. At this time the agent conducted an inspection of the radio station with the building management. The information provided by the building management and others confirmed that this transmitter was operated by More Enterprises.

5. On March 11, 2005, the San Diego Office sent a Letter of Inquiry ("LOI") to More Enterprises concerning its operation on an unauthorized frequency of 21675.0 MHz, in violation of Section 301 of the Act. On March 23, 2005, an agent of the Commission's San Diego Office returned to the More Enterprises site at 4630 Border Village Road and found that the station was operating on microwave channel 22471.75 MHz. The San Diego Office received a reply to the LOI on April 8, 2005. In its reply, More Enterprises acknowledges that it began operating this microwave radio station in 2004 on 21675.0 MHz and that it has a license application pending with the Commission. More Enterprises also states that the equipment as installed had the receiver and transmitter frequencies inadvertently switched as the station should be operating on 22471.75 MHz.

6. A further review of the Commission's database revealed that on August 17, 2005, the pending More Enterprises application for a Private Operational Fixed Point-to-Point Microwave radio station on 22471.75 MHz, located at 4630 Border Village Road, San Diego, California, was granted under call sign WQDG363.

### **III. DISCUSSION**

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>5</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>6</sup>

8. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On December 14, 2004, January 25, 2005, and March 23, 2005, measurements made by San Diego agents revealed that More Enterprises was operating a microwave radio station on microwave channels 21675.0 MHz and 22471.75 MHz. A review of Commission records indicated that More Enterprises had no authorization to operate on 21675.0 MHz. The review also indicated that More Enterprises had a pending application, but no authorization, to

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<sup>4</sup>See File No. 0001861022.

<sup>5</sup>Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>6</sup>Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

operate on 22471.75 MHz until the license was granted on August 17, 2005. On April 8, 2005, More Enterprises acknowledged operating a microwave station on the frequencies of 21675.0 MHz and 22471.75 MHz since 2004. More Enterprises also acknowledged that it had no authorization, only a pending application, to operate such a station.<sup>7</sup>

9. More Enterprises was aware licensing for its station was required, as evidenced by its license application, and admits that its microwave radio station has been operating on either 21675.0 MHz or 22471.75 MHz since the station became operational in 2004. Therefore, More Enterprises' violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that More Enterprises apparently willfully and repeatedly violated Section 301 of the Act by operating a microwave radio station without authorization.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization for the service is \$10,000.<sup>8</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, we conclude that More Enterprises is apparently liable for a forfeiture in the amount of \$10,000.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, More Enterprises Communications Network, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violation of Section 301 of the Act.<sup>10</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty (30) days of the release date of this Notice of Apparent Liability for Forfeiture, More Enterprises Communications Network, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251.

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<sup>7</sup>Pursuant to Sections 101.31(b)(1) and 101.31 (b)(1)(v) of the Rules, 47 C.F.R. §§ 101.31(b)(1), 101.31(b)(1)(v), certain applicants for point-to-point microwave stations, not located within 56.3 kilometers of any international border, operating in certain frequency bands, are deemed to have conditional authority to operate their proposed stations during the pendency of their applications. The frequency proposed for use by More Enterprises in its application is not contained in these frequency bands. Also, More Enterprises' proposed station is located approximately 0.64 km from the Mexican border.

<sup>8</sup>12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

<sup>9</sup>47 U.S.C. § 503(b)(2)(D).

<sup>10</sup>47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80.

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Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California 92111, within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>11</sup>

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to More Enterprises Communications Network, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears, Jr.  
District Director  
San Diego Office  
Western Region  
Enforcement Bureau

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<sup>11</sup>See 47 C.F.R. § 1.1914.